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FILED

MAY 21 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOLLYNN D'LIL,

CASE NO. **07 2678**
Civil Rights **BZ**

Plaintiff,

v.

EAST WEST CAFÉ; HISAM
SHABOON; DOE TRUST 1; DAVID
R. MADSEN; CARLEEN MADSEN;
HARRY E. POLLEY; JEAN E.
POLLEY; and DOES 2 through
50, Inclusive,

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:** DENIAL OF CIVIL
RIGHTS OF A DISABLED PERSON IN
VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT, AND IN
VIOLATION OF CALIFORNIA'S
DISABLED RIGHTS STATUTES

DEMAND FOR JURY TRIAL

Defendants.

[Proper Intradistrict Assignment:
San Francisco/Oakland]

Plaintiff HOLLYNN D'LIL, on behalf of herself and other
similarly situated disabled persons, hereby complains of
defendants, including the res and business named EAST WEST CAFÉ,
also commonly known as the East West Bakery or East West
Restaurant; HISAM SHABOON; DOE TRUST 1; DAVID R. MADSEN, Trustee
of DOE TRUST 1; CARLEEN MADSEN, Trustee of DOE TRUST 1; HARRY E.
POLLEY; JEAN E. POLLEY; and DOES 2 through 50, Inclusive
(hereafter "defendants"), and demands a trial by jury, and
alleges as follows:

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1 **INTRODUCTION**

2 1. The defendants own, operate and/or lease the EAST WEST
3 CAFÉ located at or near 128 North Main Street, Sebastopol.
4 Plaintiff is a patron of the restaurant. She has a qualified
5 disability. Her has a readily observable permanent disability
6 involving her lower extremities that requires the use of
7 wheelchair for mobility. She lives less than four miles from the
8 restaurant in the nearby the nearby town of Graton.

9 2. This is a suit to require defendants to remediate
10 their restaurant so that it is fully accessible and usable by
11 persons with disabilities such as plaintiff, per the design
12 requirements of Title 24 and ADAAG. Defendants maintain
13 architectural barriers to such use at their entrance, path of
14 travel to the public restrooms, and within the public restrooms
15 themselves.

16 3. Provision of full and equal access is required by
17 virtue of building's construction, alteration and occupancy
18 history occurring within the statutory period after July 1, 1970.
19 On information and belief, the restaurant was "altered" during
20 the statutory period without removal of the aforementioned
21 architectural barriers. Plaintiff seeks injunctive relief to
22 require removal of the barriers to meet the requirements of both
23 California law and the Americans With Disabilities Act of 1990.
24 Plaintiff also seeks deterrence damages for violation of her
25 Civil Rights for each date of specific deterrence or use until
26 such date as defendants bring their public facilities into full
27 compliance with the requirements of California and federal law.

28 /////

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. 1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same facts, are also brought under California law, including but not limited to violations of California Health & Safety Code Sections 19955 *et seq.*, including Section 19959; Title 24 California Code of Regulations; and California Civil Code Sections 54 and 54.1 *et seq.*

5. Venue is proper in this court pursuant to 28 U.S.C. 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that plaintiff's causes of action arose in this district.

6. **Intradistrict Jurisdiction.** Under Civil Local Rule 3-2(d), this case should be assigned to the San Francisco/Oakland intradistrict as the real property that is the subject of this action is located in the San Francisco/Oakland intradistrict and plaintiff's causes of action arose in the San Francisco/Oakland intradistrict (a property located in Sebastopol).

PARTIES

7. Plaintiff HOLLYNN D'LIL qualifies as a "physically handicapped" or "physically disabled" person, as she requires the use of a wheelchair for mobility. Plaintiff is informed and believes that each of the defendants herein, including Doe Trust 1, and Does 2-50, is the owner, constructive owner, beneficial owner, successor-owner or successor-in-interest,

1 purchaser, trust, trustee, agent, ostensible agent, alter ego,
 2 master, servant, employer, employee, representative, franchiser,
 3 franchisee, joint venturer, partner, associate, parent company,
 4 subsidiary, department, representative, or such similar capacity,
 5 of each of the other defendants, and was at all times acting and
 6 performing, or failing to act or perform, within the course and
 7 scope of his, her or its authority as owner, constructive owner,
 8 beneficial owner, successor-owner or successor-in-interest,
 9 purchaser, agent, trust, trustee, ostensible agent, alter ego,
 10 master, servant, employer, employee, representative, franchiser,
 11 franchisee, joint venturer, partner, associate, parent company,
 12 subsidiary, department, representative, or such similar capacity,
 13 and with the authorization, consent, permission or ratification
 14 of each of the other defendants, and is responsible in some
 15 manner for the acts and omissions of the other defendants in
 16 proximately causing the violations and damages complained of
 17 herein, and have approved or ratified each of the acts or
 18 omissions of each other defendant, as herein described.
 19 Plaintiff will seek leave to amend when the true names,
 20 capacities, connections, and responsibilities of each defendant
 21 and Doe Trust 1, and Does 2-50, are ascertained. Alternatively,
 22 plaintiff will also seek to liability against any un-joined party
 23 pursuant to state and/or federal statutes and rules pertaining to
 24 success-in-interest liability.

25 8. Plaintiff alleges on information and belief that at
 26 all relevant times, defendants EAST WEST CAFÉ, aka East West
 27 Bakery or East West Restaurant; HISAM SHABOON; DOE TRUST 1; DAVID
 28 R. MADSEN, Trustee of DOE TRUST 1; CARLEEN MADSEN, Trustee of DOE

1 TRUST 1; HARRY E. POLLEY; JEAN E. POLLEY; and DOES 2 through 50,
2 Inclusive, either were and/or now are the owners, operators,
3 lessors and/or lessees of the public accommodation know as the
4 East West Café in Sebastopol, located at or near Assessor's
5 Parcel Number 004-243-008, and at or near 128 North Main Street.

6 9. The facilities of this business, including its
7 entrances, dining, public restrooms, and other public facilities
8 and amenities are each a "public accommodation or facility"
9 subject to the requirements of California Health & Safety Code
10 Sections 19955 et seq. and of the California Civil Code
11 Sections 54, 54.1, and 54.3. At all times relevant to this
12 complaint, defendants have held these facilities open to public
13 use. Such facilities also constitute "public accommodations" or
14 "commercial facilities" subject to the requirements of Sections
15 302 and 303 of the Americans with Disabilities Act of 1990.

16
17 **FACTUAL STATEMENT**

18 10. Defendants are required by law to provide accessible
19 facilities on each occasion that "alterations, structural repairs
20 or additions" were performed to such facilities pursuant to legal
21 standards then in effect, per Section 19959 of the Health & Safety
22 Code, and under Section 303 of the Americans With Disabilities Act
23 (which governs "new construction" and "alterations").

24 11. On information and belief, each such facility has,
25 since July 1, 1970, been newly constructed, and/or undergone
26 "alterations, structural repairs, and additions," each of which
27 has subjected the defendants and the subject restaurant's public
28 facilities to disabled access requirements of Section 19959

1 Health & Safety Code, Title 24 of the California Code of
2 Regulations, and/or, for such work occurring since January 26,
3 1992, to the requirements of Section 303 of the Americans With
4 Disabilities Act.

5 12. Plaintiff has had the construction history evaluated
6 by legal representatives and is aware the restaurant's
7 responsibility there under to remediate its inaccessible
8 facilities.

9 13. Plaintiff visits the down town area regularly and has
10 dined at the East West Café on multiple occasions. For more than
11 two years, she has both spoken and written to its owners and
12 operators seeking compliance, and has also communicated through
13 legal representatives and official intermediaries. However,
14 despite these informal requests, defendants refuse to comply with
15 the law.

16 14. Barriers to disabled access at the restaurant include:
17 the absence of an accessible landing at front entrance and
18 obstructions stored within that area; further obstructions stored
19 within the path of travel to the public restrooms; the
20 inaccessible vestibule and entrances serving the restrooms; and
21 the completely inaccessible nature of the restrooms themselves,
22 which are narrow and cramped and provide no access space in the
23 areas serving the toilet, entrance and sink. On information and
24 belief, defendants 52 chair dining setup is inaccessible both in
25 provision of clear floor space and unobstructed knee space.

26 15. As a result of the actions and failure to act of
27 defendants, and each of them, and as a result of the failure to
28 provide appropriate disabled accessible entrance, restroom and

1 dining amenities, plaintiff suffered and will suffer a loss of
2 her civil rights to full and equal access to public facilities,
3 suffered strain and exhaustion from attempting to negotiate
4 barriers as well as pain and discomfort, and will suffer
5 emotional distress, mental distress, mental suffering, mental
6 anguish, which includes that humiliation, embarrassment, anger,
7 disappointment and worry, normally and naturally expected and
8 associated with a person with a physical disability being denied
9 access to a public accommodation, all to her damages as prayed
10 hereinafter in an amount within the jurisdiction of this court.

11 16. Over the last two years and continuing, plaintiff
12 pays regular visits to the downtown Sebastopol area and has been
13 denied access when patronizing the restaurant as a paying
14 customer or in being deterred from the effort. Plaintiff would
15 like to return and use the subject restaurant on a planned or
16 spontaneous basis, but is unable to enjoy the safe full and equal
17 access to which she is entitled.

18 17. On information and belief, a number of facilities in
19 the subject building have been remodeled during the statutory
20 period since July 1, 1970, triggering accessible "path of travel"
21 requirements to each area of alteration, which includes, but is
22 not limited to, accessible public sanitary facilities and a path
23 of travel, complying with ADA and Title 24 standards. On
24 information and belief, defendants have not complied with these
25 legal obligations.

26 18. The "removal" of each of these barriers to use by
27 disabled persons was "readily achievable" under the standards of
28 Section 301(9) of the Americans With Disabilities Act of 1990 [42

1 U.S.C. 12181] at all times herein relevant. Section 303 of the
2 ADA [42 U.S.C. 12183] and California law also required the
3 removal of all such barriers upon performance of "alterations."

4 19. On information and belief, defendants continue to the
5 present date to deny "full and equal access" to plaintiff and to
6 all other disabled persons, in violation of California law,
7 including Health & Safety Code Sections 19955 *et seq.*, Civil Code
8 Sections 54 and 54.1, and Title 24 of the California Code of
9 Regulations (a.k.a. California Building Code). Further, such
10 denial of access to disabled persons also violates the
11 requirements of Title III of the federal Americans With
12 Disabilities Act of 1990, Sections 301 *et seq.* [42 U.S.C.,
13 §§ 12181 *et seq.*] (Hereinafter also called the "ADA").

14
15 **FIRST CAUSE OF ACTION:**

16 **BREACH OF STATUTORY PROTECTIONS FOR PHYSICALLY DISABLED PERSONS**

17 20. Plaintiff repleads and incorporates by reference, as
18 if fully set forth again herein, the allegations contained in
19 paragraphs 1 through 19, above.

20 21. Plaintiff is physically disabled under standards as
21 defined by all California statutes using these terms. Plaintiff
22 is also an "individual with a disability" as defined by
23 Section 54(b) Civil Code, as well as Section 3(2) of the ADA.
24 Each violation of the ADA, as plead hereinafter, is incorporated
25 by reference as a separate violation of Sections 54(c) and
26 54.1(d) California Civil Code.

27 22. Health & Safety Code Section 19955 provides in
28 pertinent part:

1 (a) The purpose of this part is to insure
2 that public accommodations or facilities constructed
3 in this state with private funds adhere to the
4 provisions of Chapter 7 (commencing with § 4450) of
5 Division 5 of Title 1 of the Government Code. For
6 the purposes of this part "public accommodation or
7 facilities" means a building, structure, facility,
8 complex, or improved area which is used by the
9 general public and shall include auditoriums,
10 hospitals, theaters, restaurants, restaurants,
11 motels, stadiums, and conventions centers.

12 23. Health and Safety Code Section 19956, which appears in
13 the same chapter as 19955, provides, in pertinent part: "[a]ll
14 public accommodations constructed in this state shall conform to
15 the provisions of Chapter 7 (commencing with § 4450) of Division
16 5 of Title 1 of the Government Code...."

17 24. Section 19956 Health & Safety Code was operative July
18 1, 1970, and is applicable to all public accommodations
19 constructed or altered after that date. On information and
20 belief, portions of the subject restaurant were constructed
21 and/or altered after July 1, 1970, and portions of the subject
22 building were structurally remodeled, altered and have undergone
23 structural repairs or additions after July 1, 1970. Such
24 construction required such building and its public accommodation
25 facilities to be subject to the requirements of Part 5.5,
26 Sections 19955, et seq., of the Health and Safety Code, which
27 requires provision of access upon "alterations, structural
28 repairs or additions" per Section 19959 Health & Safety Code, or

1 upon a change of occupancy (a form of "alteration").

2 25. Pursuant to the authority delegated by Government Code
3 Section 4450, et seq., the State Architect promulgated
4 regulations for the enforcement of these provisions. Effective
5 January 1, 1982, Title 24 of the California Administrative Code
6 adopted the California State Architect's Regulations and these
7 regulations must be complied with as to any modifications of the
8 subject building and its facilities occurring after that date.
9 Any alterations of the building after January 1, 1982 required
10 compliance with the Title 24 regulations then in effect,
11 including that an accessible path of travel leading to such
12 facility from the adjoining public right of way. Prior to 1982,
13 similar requirements were incorporated into the law from the
14 American Standards Association. On information and belief, one
15 or more of the constructions of and alterations upon and
16 modifications of the subject facilities occurred during the
17 period of time that sections of the Health and Safety Code have
18 provided that all buildings and facilities used by the public
19 must conform to each of the standards and specifications
20 described in the American Standards Association Specifications,
21 or, as to construction occurring after January 1, 1982, to the
22 standards of Title 24, the State Architect's Regulations.

23 26. Plaintiff is informed and believes and therefore
24 alleges that defendants, and their predecessors in interest as
25 owners, operators and/or lessors of the subject public
26 accommodation (for which the defendants as current owners,
27 operators and/or lessors of the building are responsible), and
28 each of them caused the subject property to be constructed,

1 altered and maintained in such a manner that physically disabled
2 persons were denied full and equal access to, within and
3 throughout said facilities, and full and equal use of said
4 building. Further, on information and belief, defendants and
5 each of them have continued to maintain and operate such building
6 and its facilities in such condition up to the present time,
7 despite actual and constructive notice to such defendants, and
8 each of them (which includes plaintiff's discussions with
9 restaurant personnel, as well as her letters to defendants, and
10 communications from legal and official representatives) that the
11 configuration of the building were in violation of the Civil
12 Rights of disabled persons, such as plaintiff. Such construction,
13 modification, ownership, operation, maintenance and practices of
14 such a public facility is in violation of law as stated in Part
15 5.5, Sections 19955ff Health and Safety Code, Sections 54 and
16 54.1, et seq., Civil Code, and elsewhere in the laws of
17 California.

18 27. On information and belief, the subject building and
19 the defendants and each of them have denied full and equal access
20 to disabled persons in other respects due to non-compliance with
21 requirements of Title 24 of the California Code of Regulations,
22 and of other provisions of disabled access legal requirements.
23 Additionally, maintaining the barriers specified in this
24 complaint is independently a violation of both Title 24 of the
25 California Building Code, and of Sections 54 and 54.1 Civil Code
26 and their guarantee of "full and equal" access to all public
27 facilities (as pled in the second cause of action, and also
28 repleads and incorporated herein by reference, as if fully

1 restated hereafter), in conjunction with Section 19955ff, per
2 James Donald v. Cafe Royalé (1990) 218 Cal.App.3d 168.

3 28. Injunctive Relief - The acts and omissions of
4 defendants as complained of continue to have the effect of
5 allowing defendants to wrongfully exclude Plaintiff, and other
6 similarly situated members of the public who are physically
7 disabled, from full and equal access to the subject restaurant.
8 Such acts and omissions are the continuing cause of humiliation
9 and mental and emotional suffering to plaintiff and other
10 similarly situated persons in that these actions treat them as
11 inferior and second class citizens and serve to discriminate
12 against them, so long as defendants do not provide a properly
13 accessible, safe and equal use of such facilities. Said acts
14 have proximately caused and will continue to cause irreparable
15 injury to Plaintiff and other similarly situated persons if not
16 enjoined by this court.

17 29. Plaintiff seeks injunctive relief, pursuant to
18 Section 19953 Health and Safety Code and Section 55 Civil Code,
19 prohibiting those of the defendants that currently own, operate,
20 and/or lease (from or to) the subject restaurant, from
21 maintaining architectural barriers to the use by disabled persons
22 of public accommodations and facilities, in violation of Part
23 5.5, Sections 19955ff Health and Safety Code. Plaintiff seeks to
24 require such defendants to create safe and properly accessible
25 facilities.

26 30. Attorneys' Fees - As a result of defendants' acts and
27 omissions in this regard, plaintiff has been required to incur
28 legal expenses and hire attorneys in order to enforce plaintiff's

1 rights and those of other similarly situated persons, and to
 2 enforce provisions of the law protecting access for the disabled,
 3 and prohibiting discrimination against the disabled, and to take
 4 such action both in her own interest and in order to enforce an
 5 important right affecting the public interest. Plaintiff
 6 therefore seeks recovery of all reasonable attorneys' fees,
 7 litigation expenses and costs incurred, pursuant to the
 8 provisions of Section 1021.5 of the Code of Civil Procedure.
 9 Plaintiff also seeks recovery of her attorneys' fees and costs
 10 pursuant to Section 19953 Health and Safety Code.

11 WHEREFORE, plaintiff prays for relief as hereinafter stated.
 12

13 **SECOND CAUSE OF ACTION:**

14 **VIOLATION OF DISABLED RIGHTS ACT,**

15 **CIVIL CODE §§ 54, 54.1, 54.3 ET SEQ.**

16 **DENIAL OF FULL AND EQUAL ACCESS TO A PHYSICALLY DISABLED PERSON**

17 31. Plaintiff repleads and incorporates, as if fully set
 18 forth again herein, the allegations contained in paragraphs 1
 19 through 30, above.

20 32. At all times relevant to this action, California Civil
 21 Code Sections 54 and 54.1 have provided that physically disabled
 22 persons are not to be discriminated against because of physical
 23 handicap or disability. Section 54 Civil Code provides:

24 Individuals with disabilities shall have the
 25 same right as the general public to the full and free
 26 use of the streets, highways, sidewalks, walkways,
 27 public buildings, public facilities, including
 28 hospitals, clinics, and physicians' offices, public

1 facilities, and other public places.

2 Section 54.1 Civil Code provides that:

3 (a)(1) Individuals with disabilities shall be
4 entitled to full and equal access, as other members
5 of the general public, to accommodations, advantages,
6 facilities, medical facilities... and privileges of
7 all common carriers, airplanes, motor vehicles... or
8 any other public conveyances or modes of
9 transportation... restaurants, lodging places,
10 places of public accommodation and amusement or
11 resort, and other places to which the general public
12 is invited, subject only to the conditions or
13 limitations established by law, or state or federal
14 regulations, and applicable alike to all other
15 persons.

16 33. California Civil Code Section 54.3 provides that any
17 person or corporation who denies or interferes with admittance to
18 or enjoyment of the public facilities as specified in Section 54
19 and 54.1 Civil Code is liable for EACH such offense for the
20 actual damages and any amount up to a maximum of three times the
21 amount of actual damages but in no case less than \$1,000 and such
22 attorneys' fees that may be determined by the Court in addition
23 thereto, suffered by any person denied any of the rights provided
24 in Sections 54 and 54.1, for services necessary to enforce those
25 rights.

26 34. As a result of the actions and failure to act of
27 defendants, and each of them, and as a result of the failure to
28 provide appropriate disabled accessible guestrooms and restaurant

1 amenities, plaintiff suffered and will suffer a loss of her civil
2 rights to full and equal access to public facilities, suffered
3 strain and exhaustion from attempting to negotiate barriers as
4 well as pain and discomfort, and will suffer emotional distress,
5 mental distress, mental suffering, mental anguish, which includes
6 that shame, humiliation, embarrassment, anger, disappointment and
7 worry, normally and naturally expected and associated with a
8 person with a physical disability being denied access to a public
9 accommodation, all to her damages as prayed hereinafter in an
10 amount within the jurisdiction of this court.

11 35. Plaintiff is a person with a disability within the
12 meaning of Civil Code Sections 54 and 54.1 whose rights have been
13 infringed upon and violated by the defendants. Plaintiff has
14 been denied full and equal access on multiple occasions on each
15 specific date of potential use in which full and equal access to
16 such facility was denied or deterred occurring within two years
17 of the filing of this complaint. On information and belief,
18 defendants have failed to act to provide full and equal public
19 access to their subject restaurant, and continue to operate in
20 violation of the law and continue to discriminate against
21 physically disabled persons by failing to allow access to their
22 building who cannot enter or use facilities on a full and equal
23 basis.

24 36. On information and belief, defendants were on notice
25 of the requirements of the law relating to provision for full and
26 equal disabled access. Especially as defendants were on full
27 notice, each date that plaintiff's visits the area that
28 defendants have continued to deny access to disabled persons

1 constitutes a new and distinct violation of plaintiff's right to
2 full and equal access to this public facility, in violation of
3 Sections 54 and 54.1, et seq. Civil Code. In the event of a
4 default judgment against any particular defendant, plaintiff will
5 seek an injunction requiring provision of accessible entrance,
6 dining, path of travel and public restroom facilities, plus
7 damages of \$1,000 for each occasion of attempted use or
8 deterrence day for the two years proceeding the filing of this
9 complaint, plus reasonable attorneys' fees, litigation expenses
10 and costs as set by the court, until it is brought into full
11 compliance with state and federal access laws protecting the
12 rights of the disabled.

13 37. Plaintiff has been damaged by defendants' wrongful
14 conduct and seeks the relief that is afforded by Sections 54.1,
15 54.3 and 55 of the Civil Code. Plaintiff seeks actual damages,
16 and statutory and treble damages against defendants for all
17 periods of time mentioned herein. As to those of the defendants
18 that currently own, operate, and/or lease (from or to) the
19 subject restaurant, plaintiff seeks a preliminary and permanent
20 injunctive relief to enjoin and eliminate the discriminatory
21 practices and barriers that deny equal access for disabled
22 persons, and for reasonable attorneys' fees.

23 38. WHEREFORE, plaintiff asks this Court to enjoin any
24 continuing refusal by the defendants that currently own, operate,
25 and or lease (from or to) the subject restaurant, to grant such
26 access to plaintiff and other similarly situated disabled
27 persons, or alternatively to enjoin operation of the subject
28 restaurant as a public accommodation until such defendants comply

1 with all applicable statutory requirements relating to access to
 2 physically disabled persons, and that the Court award plaintiff
 3 her reasonable statutory attorneys' fees, litigation expenses and
 4 costs pursuant to Civil Code Section 55, Code of Civil Procedure
 5 Section 1021.5, and Health & Safety Code Section 19953, and as
 6 further prayed for herein.

7 WHEREFORE, plaintiff prays for damages and injunctive relief
 8 as hereinafter stated.

9
 10 **THIRD CAUSE OF ACTION:**

11 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

12 **42 USC §§ 12101ff**

13 39. Plaintiff repleads and incorporates by reference, as
 14 if fully set forth again herein, the factual allegations
 15 contained in paragraphs 1 through 38, above.

16 40. Pursuant to law, in 1990 the United States Congress
 17 made findings per 42 U.S.C. Section 12101 regarding physically
 18 disabled persons, finding that laws were needed to more fully
 19 protect "some 43 million Americans with one or more physical or
 20 mental disabilities;" that "historically society has tended to
 21 isolate and segregate individuals with disabilities;" that "such
 22 forms of discrimination against individuals with disabilities
 23 continue to be a serious and pervasive social problem;" that "the
 24 Nation's proper goals regarding individuals with disabilities are
 25 to assure equality of opportunity, full participation,
 26 independent living and economic self sufficiency for such
 27 individuals;" and that "the continuing existence of unfair and
 28 unnecessary discrimination and prejudice denies people with

1 disabilities the opportunity to compete on an equal basis and to
2 pursue those opportunities for which our free society is
3 justifiably famous..."

4 41. Congress stated as its purpose in passing the
5 Americans with Disabilities Act (42 USC § 12101(b)):

6 It is the purpose of this act -

7 (1) to provide a clear and comprehensive
8 national mandate for the elimination of
9 discrimination against individuals with
10 disabilities;

11 (2) to provide clear, strong, consistent,
12 enforceable standards addressing discrimination
13 against individuals with disabilities;

14 (3) to ensure that the Federal government plays
15 a central role in enforcing the standards
16 established in this act on behalf of individuals
17 with disabilities; and

18 (4) to invoke the sweep of Congressional
19 authority, including the power to enforce the 14th
20 Amendment and to regulate commerce, in order to
21 address the major areas of discrimination faced day
22 to day by people with disabilities. (Emphasis
23 added)

24 42. As part of the Americans with Disabilities Act, Public
25 Law 101-336, (hereinafter the "ADA"), Congress passed "Title III
26 - Public Accommodations and Services Operated by Private
27 Entities" (42 U.S.C 12181ff). Among "private entities" which are
28 considered "public accommodations" for purposes of this title are

1 identified as "a restaurant, bar or other establishment serving
2 food or drink." (§§ 301(7) [42 U.S.C. 12181].)

3 43. Pursuant to Section 302 [42 U.S.C. 12182], "[n]o
4 individual shall be discriminated against on the basis of
5 disability in the full and equal enjoyment of the goods,
6 services, facilities, privileges, advantages, or accommodations
7 of any place of public accommodation by any person who owns,
8 leases, or leases to, or operates a place of public
9 accommodation."

10 44. Among the general prohibitions of discrimination
11 included in Section 302(b)(1)(A) are the following:

12 § 302(b)(1)(A)(i): "DENIAL OF PARTICIPATION. -

13 It shall be discriminatory to subject an individual
14 or class of individuals on the basis of a disability
15 or disabilities of such individual or class,
16 directly, or through contractual, licensing, or other
17 arrangements, to a denial of the opportunity of the
18 individual or class to participate in or benefit from
19 the goods, services, facilities, privileges,
20 advantages, or accommodations of an entity."

21 § 302(b)(1)(A)(ii): "PARTICIPATION IN UNEQUAL
22 BENEFIT - It shall be discriminatory to afford an
23 individual or class of individuals, on the basis of a
24 disability or disabilities of such individual or
25 class, directly, or through contractual, licensing,
26 or other arrangements with the opportunity to
27 participate in or benefit from a good, service,
28 facility, privilege, advantage, or accommodation that

1 is not equal to that afforded to other individuals."

2 § 302(b)(1)(A)(iii): "SEPARATE BENEFIT. - It
3 shall be discriminatory to provide an individual or
4 class of individuals, on the basis of a disability or
5 disabilities of such individual or class, directly,
6 or through contractual, licensing, or other
7 arrangements with a good, service, facility,
8 privilege, advantage, or accommodation that is
9 different or separate from that provided to other
10 individuals, unless such action is necessary to
11 provide the individual or class of individuals with a
12 good, service, facility, privilege, advantage, or
13 accommodation, or other opportunity that is as
14 effective as that provided to others."

15 45. Among the specific prohibitions against
16 discrimination in the ADA include the following:

17 § 302(b)(2)(A)(ii): "A failure to make
18 reasonable modifications in policies, practices or
19 procedures when such modifications are necessary to
20 afford such goods, services, facilities, privileges,
21 advantages or accommodations to individuals with
22 disabilities..."

23 § 302(b)(2)(A)(iii): "A failure to take such
24 steps as may be necessary to ensure that no
25 individual with a disability is excluded, denied
26 services, segregated or otherwise treated differently
27 than other individuals because of the absence of
28 auxiliary aids and services, unless the entity can

1 demonstrate that taking such steps would
2 fundamentally alter the nature of the good, service,
3 facility, privilege, advantage, or accommodation
4 being offered or would result in an undue burden;"

5 § 302(b)(2)(A)(iv): "A failure to remove
6 architectural barriers, and communication barriers
7 that are structural in nature, in existing
8 facilities... where such removal is readily
9 achievable;"

10 § 302(b)(2)(A)(v): "Where an entity can
11 demonstrate that the removal of a barrier under
12 clause (iv) is not readily achievable, a failure to
13 make such goods, services, facilities, privileges,
14 advantages, or accommodations available through
15 alternative methods if such methods are readily
16 achievable." The acts and omissions of defendants
17 set forth herein were in violation of plaintiff's
18 rights under the ADA, Public Law 101-336, and the
19 regulations promulgated thereunder, 28 CFR Part
20 36ff.

21 46. The removal of each of the barriers complained of by
22 plaintiff as hereinabove (at paragraph 14) alleged were - at all
23 times on or after January 26, 1992 - "readily achievable."

24 47. Further, at all times herein mentioned, modification
25 of or removal of these barriers was "readily achievable" under
26 the factors specified in the Americans with Disabilities Act of
27 1990, including but not limited to section 301(9) [42 U.S.C.
28 12181], and the Regulations adopted thereto.

1 48. Further, if defendants are collectively able to
2 "demonstrate" that it was not "readily achievable" for defendants
3 to remove each of such barriers, defendants have failed to make
4 the required services available through alternative methods which
5 were readily achievable, as required by Section 302 of the ADA
6 [42 U.S.C. 12182].

7 49. "Discrimination" is further defined under
8 Section 303(a)(2) of the ADA, for a facility or part thereof that
9 was altered after the effective date of Section 303 of the ADA in
10 such a manner as to affect or that could affect the usability of
11 the facility or part thereof by persons with disabilities, to
12 include per Section 303(a)(2) [42 U.S.C. 12183], "a failure to
13 make alterations in such a manner that, to the maximum extent
14 feasible, the altered portions of the facility are readily
15 accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs." Additionally, for
17 alterations to areas of a facility involving a "primary
18 function," discrimination under the ADA, per Section 303(a)(2)
19 (42 U.S.C. 12183), also includes the failure of an entity "to
20 make the alterations in such a manner that, to the maximum extent
21 feasible, the path of travel to the altered area and the
22 bathrooms, telephones, and drinking fountains serving the altered
23 area, are readily accessible to and usable by individuals with
24 disabilities." On information and belief, the subject building
25 constitutes a "commercial facility," and defendants have, since
26 the date of enactment of the ADA, performed alterations
27 (including alterations to areas of primary function) to the
28 subject building and its facilities, public accommodations, and

1 commercial facilities, which fail to provide facilities and paths
2 of travel to such areas that are readily accessible to and usable
3 by individuals with disabilities, in violation of Section
4 303(a)(2), and the regulations promulgated thereunder, 28 CFR
5 Part 36ff.

6 50. Pursuant to the Americans with Disabilities Act, 42
7 USC 12188ff, Section 308, plaintiff is entitled to the remedies
8 and procedures set forth in Section 204, subsection (a), of the
9 Civil Rights Act of 1964 (42 USC 2000a-3, at subsection (a)), as
10 plaintiff is being subjected to discrimination on the basis of
11 disability in violation of this title or has reasonable grounds
12 for believing that she is about to be subjected to discrimination
13 in violation of Sections 302 and 303. On information and belief,
14 defendants have continued to violate the law and deny the rights
15 of plaintiff and of other disabled persons to access this public
16 accommodation for the two years proceeding the filing of this
17 complaint. Pursuant to Section 308(a)(2), "[i]n cases of
18 violations of Section 302(b)(2)(A)(iv)... injunctive relief shall
19 include an order to alter facilities to make such facilities
20 readily accessible to and usable by individuals with disabilities
21 to the extent required by this title."

22 51. As a result of defendants' acts and omissions in
23 this regard, plaintiff has been required to incur legal expenses
24 and attorney fees, as provided by statute, in order to enforce
25 plaintiff's rights and to enforce provisions of the law
26 protecting access for disabled persons and prohibiting
27 discrimination against disabled persons. Plaintiff seeks
28 recovery of all reasonable attorneys' fees, litigation expenses

(including expert fees) and costs, pursuant to the provisions of Section 505 of the ADA (42 U.S.C. 12205) and the Department of Justice's regulations for enforcement of Title III of the ADA (28 CFR 36.505). Additionally, plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to require the defendants to make their facilities accessible to all disabled members of the public, justifying "public interest" attorneys' fees pursuant to the provisions of California Code of Civil Procedure Section 1021.5.

WHEREFORE, plaintiff prays that this Court grant relief as hereinafter stated:

FOURTH CAUSE OF ACTION:

**DAMAGES AND INJUNCTIVE RELIEF UNDER THE DISABLED RIGHTS ACT
FOR VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT**

52. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 51 of this complaint.

53. Each violation of the Americans With Disabilities Act of 1990, as complained of in the Third Causes of Action hereinabove (the contents of which causes of action have been incorporated herein as if separately restated word for word hereafter), is also a violation of section 54(c) and section 54.1(d) California Civil Code, further and independently justifying damages, injunctive relief, and other statutory relief per sections 54.3 and 55 California Civil Code, all as previously pled.

54. As a result of defendants' acts and omissions in

1 this regard, plaintiff has been required to incur legal expenses
2 and attorney fees, as provided by statute, in order to enforce
3 plaintiff's rights and to enforce provisions of the law
4 protecting access for disabled persons and prohibiting
5 discrimination against disabled persons. Plaintiff therefore
6 seeks recovery of all reasonable attorneys' fees, litigation
7 expenses (including expert fees) and costs, pursuant to the
8 provisions of Section 55 of the Civil Code. Additionally,
9 plaintiff's lawsuit is intended not only to obtain compensation
10 for damages to plaintiff, but also to require the defendants to
11 make their facilities accessible to all disabled members of the
12 public, justifying "public interest" attorneys' fees pursuant to
13 the provisions of California Code of Civil Procedure Section
14 1021.5.

15 WHEREFORE, plaintiff prays for damages and injunctive
16 relief as hereinafter stated.

17
18 **FIFTH CAUSE OF ACTION:**

19 **DAMAGES AND INJUNCTIVE RELIEF UNDER THE UNRUH CIVIL RIGHTS ACT**
20 **FOR VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT**

21 55. Plaintiff repleads and incorporates by reference, as
22 if fully set forth again herein, the allegations contained in
23 paragraphs 1 through 54 of this complaint.

24 56. Each violation of the Americans With Disabilities Act
25 of 1990, as complained of in the Third Causes of Action
26 hereinabove (the contents of which causes of action have been
27 incorporated herein as if separately repled), is also a violation
28 of section 51(f) of the Unruh Civil Rights Act, further and

1 independently justifying damages of \$4,000 per offense,
2 injunctive relief, and other statutory relief per Section 52 and
3 common law decision.

4 57. As a result of defendants' acts and omissions in
5 this regard, plaintiff has been required to incur legal expenses
6 and attorney fees, as provided by statute, in order to enforce
7 plaintiff's rights and to enforce provisions of the law
8 protecting access for disabled persons and prohibiting
9 discrimination against disabled persons. Plaintiffs therefore
10 seek recovery of all reasonable attorneys' fees, litigation
11 expenses (including expert fees) and costs, pursuant to the
12 provisions of Section 55 of the Civil Code. Additionally,
13 plaintiff's lawsuit is intended not only to obtain compensation
14 for damages to plaintiff, but also to require the defendants to
15 make their facilities accessible to all disabled members of the
16 public, justifying "public interest" attorneys' fees pursuant to
17 the provisions of California Code of Civil Procedure Section
18 1021.5.

19 WHEREFORE, plaintiff prays for damages and injunctive
20 relief as hereinafter stated.

21
22 **SIXTH CAUSE OF ACTION:**

23 **VIOLATION OF GOVERNMENT CODE SECTION 12948**

24 58. Plaintiff repleads and incorporates by reference,
25 as if fully set forth again herein, the factual allegations
26 contained in paragraphs 1 through 57 of this complaint.

27 59. Defendants' actions are in violation of Government
28 Code Section 12948, and the corresponding Civil Code Sections 51,

1 54, and 54.1.

2 60. Plaintiff seeks injunctive relief, statutory and
3 compensatory damages, punitive damages, and attorneys fees under
4 the FEHA.

5 Wherefore, plaintiff prays that the court grant relief as
6 requested herein below.

7

8 **PRAYER**

9 WHEREFORE, plaintiff prays for an award and relief as
10 follows:

11 1. That those of the defendants that currently own,
12 operate, and or lease (from or to) the subject building, parcel,
13 restaurant business, and their facilities, known as East West
14 Café, including any subsequent successors in interests and/or
15 parties controlling the litigation, be preliminarily and
16 permanently enjoined from operating and maintaining these public
17 facilities as public accommodations and commercial facilities, so
18 long as disabled persons are not provided full and equal access
19 to the accommodations and facilities, in violation of provided by
20 Sections 54, 54.1, and 55 et seq., of the Civil Code, Sections
21 19955 et seq. Health & Safety Code, Sections 4450, et seq.
22 Government Code, the American Standard Specifications
23 (A117.1961), or such other standards, including those of the
24 State Architect's Regulations for Handicapped Access, as found in
25 Title 24 of the California Code of Regulations or other
26 regulations as are currently required by law; and that defendants
27 be ordered to come into compliance with the Americans with
28 Disabilities Act of 1990, including an order that those of the

1 defendants that currently own, operate, and/or lease (from or to)
2 the subject restaurant, inter alia, "alter the subject facilities
3 to make such facilities readily accessible to and usable by
4 individuals with disabilities," and institute reasonable
5 modifications in policies and practices, per Section 308 of
6 Public Law 101-336 (the ADA);

7 2. General, compensatory, and statutory damages, and all
8 damages as afforded by Civil Code Sections 54.3, including treble
9 damages, for each violation and each date of use or deterrence on
10 which defendants have denied to plaintiff equal access for the
11 disabled, and for the period commencing two years proceeding the
12 filing of this complaint, according to proof.

13 3. General, compensatory, and statutory damages, and all
14 damages as afforded by Civil Code Sections 52, including treble
15 damages, for each violation and each date on which defendants
16 have denied to plaintiff equal access for the disabled under
17 Title III of the ADA, and for the period commencing two years
18 proceeding the filing of this complaint, according to proof.

19 4. Attorney's fees, litigation expenses and costs
20 pursuant to Sections 54.3 and 55 of the Civil Code, Section 19953
21 Health & Safety Code, Section 1021.5 Code of Civil Procedure, and
22 Section 505 of the ADA;

23 5. For all costs of suit;

24 6. Prejudgment interest pursuant to Section 3291 of the
25 Civil Code;

26 7. Such other and further relief as the Court deems just

27 ////
28

1 and proper.

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3 Dated: May 17, 2007

THIMESCH LAW OFFICES
TIMOTHY S. THIMESCH

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Attorneys for Plaintiff
HOLLYNN D'LIL

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DEMAND FOR JURY TRIAL

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Plaintiff hereby demands a jury for all claims for which a
10 jury is permitted.

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13 Dated: May 17, 2007



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By: TIMOTHY S. THIMESCH
Attorneys for Plaintiff

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